IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5700 of 1995

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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S L M MANEKLAL INDUSTRIES LTD - Petitioner(s)

Versus

SHAIKH VALIMOHAMAD HUSAINBHAI - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioner No(s).: 1.

MR KS ACHARYA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 22/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 27.01.1995 passed by the Labour Court, Ahmedabad, in

Reference (LCA) No.791 of 1990, whereby the petitioner was directed to reinstate the respondent with 25 per cent back wages.

2.0 The respondent herein was employed as a Worker in the Assembly Department of the petitioner. It is the case of the petitioner that on 23.11.1983, while the respondent was on duty, he used filthy language and abused the Supervisor of the Department. Therefore, show cause notices were issued to the respondent. Since the charges leveled against the respondent were proved, he was dismissed from service by order dated 09.03.1984.

2.1 Being aggrieved by the said order, the respondent raised a dispute, which, ultimately, culminated into a reference being Reference (LCA) No.791 of 1990. The Labour Court, after hearing the parties, passed the impugned award. Hence, this petition.

3.0 Ms. Bhatt learned advocate for the petitioner has contended that the Labour Court has committed serious error of law in exercising powers under Section 11(A) of the Industrial Disputes Act, 1947 since the Labour Court itself has observed that the findings of the Inquiry

Officer about the guilt of the employee and the penalty of removal from service were just and proper. She has further submitted that the petitioner Company is already closed down. Therefore, the Labour Court has committed error in exercising powers under Section 11(A) of the Industrial Disputes Act, 1947.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. Since the charges leveled against the respondent were proved and looking to the gravity of misconduct committed by the respondent, the Labour Court ought not to have granted reinstatement in service to the respondent. In my opinion, the Labour Court has committed serious error in exercising powers under Section 11(A) of the Industrial Disputes Act, 1947. Moreover, since the petitioner Company is already closed down, the respondent cannot be granted reinstatement in service.

4.1 So far as the grant of 25 per cent back wages is concerned, it is required to be noted that the Labour Court has not given any cogent reasons as to on what basis it has awarded the same. Moreover, in view of the principle laid down by the Apex Court in the case of

General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. pg.137, wherein it has been held that an order for payment of back wages should not be passed in a mechanical manner but a host of factors are to be taken into consideration before passing any such order, the order awarding back wages is also required to be quashed and set aside.

5.0 In above view of the matter, the petition is allowed. The impugned award dated 27.01.1995 passed by the Labour Court, Ahmedabad, in Reference (LCA) No.791 of 1990 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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